BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Opinions of Courts Below.

The opinion of the Appellate Court of Illinois is printed at R. 46-58, and is reported in 325 Ill. App. 375, 60 N. E. (2d) 457.

The opinion of the Supreme Court of Illinois is printed at R. 60-69, and is reported in 392 Ill. 182 (advance sheet No. 3), 64 N. E. (2d) 477 (advance sheet No. 6).

II.

Jurisdiction.

Jurisdiction of this court is invoked under section 237 (b) of the Judicial Code, as amended by the Act of February 13, 1925, Ch. 229, 43 Stat. 937 (28 U. S. C. A. sec. 344 (b)).

The right, privilege or immunity specially set up or claimed by petitioner is under the Second War Powers Act of March 27, 1942 (Ch. 199, Title II, sec. 201, 56 Stat. 177, Tit. 50 U. S. C. A. App. sec. 632), which amended the Act of July 2, 1917 (Ch. 35, 40 Stat. 241, 50 U. S. C. A. sec. 171). Both Acts are quoted in the appendix to this brief.

III.

Statement of the Case.

The summary and short statement of the matter involved, set forth in the preceding petition, contains the material facts necessary to an understanding of the case, and in the interest of conciseness they are not here restated.

IV.

Specification of Errors Intended to be Urged.

1. The Supreme Court of Illinois erred in failing to hold that the governmental appropriation of the land operated to abate the rent *pro tanto* and to discharge petitioner from liability to respondents for rent accruing during the period of such appropriation by the government.

2. The Supreme Court of Illinois erred in failing to hold that the governmental appropriation constituted an eviction by paramount right and terminated the lease by operation of law.

3. The Supreme Court of Illinois erred in failing to hold that the doctrine of commercial frustration is applicable to the facts.

4. The judgment below is contrary to the law and the facts.

V.

Summary of Argument.

This case involves the contentions of petitioner that the taking, by the United States of America, by the exercise of the power of eminent domain, under the Second War

Powers Act, of an entire parcel of leased property for temporary use, for military and other war purposes, near the end of a long-term leasehold, for a definite period of 15 months, with the right to extend the period of the taking for future indefinite yearly periods, which may fall short of or exceed the remaining term of the lease, thereby rendering the property incapable of occupation for any purpose by the lessee, (a) operates to abate the rent *pro tanto,* and to discharge the lessee from liability to the lessor for rent accruing during the period of such governmental appropriation; (b) constitutes an eviction of the lessee by paramount right and terminates the lease by operation of law; and (c) calls for the application of the doctrine known as "frustration of purpose" or "commercial frustration," and terminates the lease by operation of law.

ARGUMENT.

Point A.

When the United States of America, by the exercise of the power of eminent domain, under the Second War Powers Act, takes an entire parcel of leased property for temporary use, for military and other war purposes, for a definite period of 15 months, with the right to extend the period of the taking for future indefinite yearly periods, which may fall short of or exceed the remaining term of the lease, thereby rendering the property incapable of occupation for any purpose by the lessee, the taking operates to abate the rent pro tanto, and to discharge the lessee from liability to the lessor for rent accruing during the period of such appropriation by the government of the use of the demised premises.

The federal statute authorizing the condemnation referred to in the pleadings is known as Title II of the Second War Powers Act of March 27, 1942, Ch. 199, 56 Stat. 177, and is quoted in full in the appendix to this brief. It amended the Act of July 2, 1917, Ch. 45, 40 Stat. 241, which is also quoted in the appendix.

Petitioner urges that the decision of this court in *Gates* v. *Goodloe*, 101 U. S. 612, should have controlled the judgment sought to be reviewed. That case, as does the case at bar, came to this court from a state supreme court. It is the outstanding case laying down the American judicial philosophy on the question. In that case Gates, Wood & McKnight occupied a storehouse in Memphis, Tennessee, under a lease from one, Brinkley, testator of Goodloe, executed in 1859 for a term of five years. For

the stipulated rent, the lessees had executed promissory notes, payable quarterly during the whole period of the lease. On June 6, 1862, during the term of the lease, military possession was taken of the City of Memphis, and two months later General Sherman ordered that all rents for buildings which were occupied, but the owners of which had "gone South," were to be paid to the quartermaster. Brinkley, the lessor, upon the approach of the Union forces, left his home in Memphis and went within the lines of the Confederate forces, where he remained until 1864. The lessees of the storehouse were notified by the military rental agent to pay him the rents going to the lessor. They refused to recognize that order or to so pay the rents and, by reason of such refusal, were dispossessed by the military authorities. From the time the lessees were thus dispossessed until July 11, 1863, the property remained under Federal military control. After the war, the lessor sued on the rent notes and judgment was entered thereon by the Chancery Court of Shelby County, Tennessee for some $8,000.00. An appeal was taken to the Supreme Court of the State of Tennessee, which affirmed the trial court. A writ of error was then sued out from this Court to the Supreme Court of Tennessee. The question for determination by this Court was whether a lessee who was dispossessed by military authorities and deprived of the use and control of the demised premises was discharged from liability to the lessor for rent accruing during the period the lessee was deprived of possession. In reversing the Supreme Court of Tennessee, this Court held at pp. 616-617 as follows:

> "The Supreme Court of Tennessee was of opinion that the lessees were not discharged from liability upon their contract with Brinkley, by reason of the action taken by the military authorities touching the rents accruing from the property in question. That court recognized the hardship of the case upon the

lessees, but consistently with its views of the law the relief asked for could not be given.

"We are unable to give our assent to the conclusion reached by that learned court. It is inconsistent with our decision in *Harrison* v. *Myers* (92 U. S. 111), where we held that the lessee was discharged from liability to the lessor for rent of certain property in New Orleans during the period when the rents and profits arising therefrom were required by the Federal military authorities, occupying and controlling that city in the year 1862, to be paid directly to them. There is some difference in the facts of the two cases, but in their essential features they are alike."

The reasoning of this Court appears at pp. 618-619 as follows:

"The action of the military authorities in seizing the rents arising from the property which Brinkley had leased to Gates, Wood & McKnight not being then, in violation of law,—that which was done being regarded as having been done by the authority of the United States in lawful defence of the national existence against armed insurrection,—*it results, necessarily, as we think, that the lessees, when dispossessed by military authority and deprived of all future use and control of the leased property, were discharged from liability to the lessors for rent accruing during, at least, the period of such dispossession.* They were not discharged from liability for rent which had previously accrued. But since the consideration for their promise to pay rent, from time to time, was the possession and use of the leased property during the term and upon the conditions specified in the lease, and since such enjoyment and use were materially interrupted and prevented by the interference of the law, or of lawful public authority, to which both parties were amenable, the lessees, it seems to the court, ought to be protected against liability for the rent stipulated in the contract of 1859, *for the period they were thus kept out of possession and enjoyment of the property.* The events and contingencies caus-

ing that result were not such as the parties anticipated, nor such as we can suppose were in contemplation when the contract was made. Otherwise they would, it must be assumed, have been provided for in the contract.

"The conclusion thus reached is abundantly sustained by authority. Indeed, *many of the authorities would justify us in holding the action of the military authorities to have worked the dissolution of the entire contract of lease from the moment the lessees were dispossessed.*" (Italics ours.)

The period during which the lessees were dispossessed by military authority and deprived of all use and control of the leased property, was only temporary, and fell short of the full term of the lease, just as it has thus far in the instant case. The Gates lease was executed in 1859 for a term of five years. The period during which the tenants were deprived of possession was from about August 6, 1862 to July 11, 1863. The fee simple title to the leased premises was not taken by military authority, just as it was not taken in the case at bar. The tenants were merely temporarily deprived of the use and control of the leased premises for some months during the term of the lease, just as the petitioner in the instant case was deprived of the use and control of its leased premises by the government during the term of its lease.

As this Court said in referring to *Harrison* v. *Myers*, and as we now say in comparing *Gates* v. *Goodloe* with the case at bar, "There is some difference in the facts of the two cases, but in their essential features they are alike."

If anything, the instant case is stronger than *Gates* v. *Goodloe*, because there it was certain at the time of trial that the temporary occupation by military authorities had ended during the term of the lease; whereas in the case at bar the temporary occupation by the government is still

continuing and there is a possibility that it may outlast the termination of the lease by its terms on November 30, 1946.

Petitioner cited and relied on *Gates* v. *Goodloe* in both the Appellate and Supreme Courts of Illinois. Respondents' only answer to that case was, "The soundness of this decision is somewhat questionable. * * * the Supreme Court overlooked entirely the famous case of *Paradine* v. *Jane*, Aleyn 26, 82 Eng. Rep. 897 * * *." (Decided some 230 years earlier.) (R. 71-72.) Counsel for petitioner, when this cause was argued orally before the Supreme Court of Illinois, apprised that court that he was leaning heavily on it for a reversal (R. 71). The petition for rehearing again stressed the importance of this court's decision (R. 71-74). Neither of the reviewing state courts adverted to the *Gates* case in their opinions. It is submitted that the courts below fell into the same error as that committed by the trial court and the Tennessee Supreme Court in the *Gates* case. It should, in justice, be rectified by this court, as it was once before in 1879. A failure to review the instant case would result in two diametrically opposed judicial philosophies applied to analogous factual situations.

In addition to the square holding in *Gates* v. *Goodloe*, this court again, only a few days ago, employed language in *United States* v. *Petty Motor Co.* (and consolidated cases, Nos. 77-83, not yet officially reported, opinions delivered February 25, 1946), demonstrating clearly that the point presently contended for is sound law. The following is quoted from p. 6 of the opinion written by Mr. Justice REED:

> "There is a fundamental difference between the taking of a part of a lease and the taking of the whole lease. That difference is that the lessee must return to the leasehold at the end of the Government's use or at least *the responsibility for the period of the*

> *lease, which is not taken, rests upon the lessee.* This was brought out in the *General Motors* decision." (Citing *United States* v. *General Motors Corporation,* 323 U. S. 373, 380, 383.) (Italics ours.)

If the responsibility for the period of the lease, *which is not taken,* rests upon the lessee, then, conversely, by the clearest of inferences, the responsibility for the period of the lease, *which is taken,* does *not* rest upon the lessee. This latest expression of this court squares precisely with its holding in *Gates* v. *Goodloe.* It follows inevitably, therefore, that the judgment sought to be reviewed is erroneous in not excusing payment of the rent which accrued, in its entirety, during the period of the government's exclusive use.

Other cases holding that a taking of a part of leased premises operates to abate the rent *pro tanto* are *Biddle* v. *Hussman,* 23 Mo. 597; *Levee Com'rs.* v. *Johnson,* 66 Miss. 248, 6 So. 199; *Baltimore* v. *Latrobe,* 101 Md. 621, 61 Atl. 203, 4 Ann. Cas. 1005, and *Kingsland* v. *Clark,* 24 Mo. 24.

In *United Cigar Stores Co.* v. *Norwood* (1925) 208 N.Y.S. 420, 124 Misc. Rep. 488, in deciding the method to be adopted in fixing the amount of rent to be paid by the defendant after a partial taking by condemnation, the court said at p. 423:

> "By the common law, rental reserved in the lease would have been reduced in the ratio which the part taken bore to the whole. *Gillespie* v. *Thomas,* 15 Wend. 464. That rule could not be challenged as inequitable."

Gardella v. *Hagopian,* (1941) 28 N.Y.S. (2d) 250, was a summary proceeding by a landlord against a tenant to recover rent for demised premises, a portion of which was taken by eminent domain. The court held at p. 253:

> "Where a portion of leased premises is taken by force of paramount title, the tenant is entitled to a proportionate abatement of his rent. *Duhain* v. *Mermod, Jaccard & King Jewelry Co.,* 211 N. Y. 364, 105 N. E. 657, Ann. Cas. 1915 C. 404."

Nichols on Eminent Domain (2d ed.) Vol. 1, pp. 713-714, states:

> "It would seem that under such conditions it would be fairer to both parties, especially when such a large proportion of the property is taken that the tenant cannot devote the remainder to the use for which he leased the premises, either to treat the taking as a termination of the lease, or *to allow a proportional amount of the rent to be abated* and to have the damages of the respective parties assessed accordingly. (Cit. *Uhler* v. *Cowen*, 199 Pa. 443, 44 Atl. 42.)" (Italics ours.)

Point B.

When the United States of America, by the exercise of the power of eminent domain, under the Second War Powers Act, takes an entire parcel of leased property for temporary use, for military and other war purposes, near the end of a long-term leasehold, for a definite period of 15 months, with the right to extend the period of the taking for future indefinite yearly periods, which may fall short of or exceed the remaining term of the lease, thereby rendering the property incapable of occupation for any purpose by the lessee, the lessee is evicted by paramount right and the lease is terminated by operation of law.

In *Gates* v. *Goodloe*, 101 U. S. 612, referred to more fully under point A of this argument, this court held at p. 619:

> "The conclusion thus reached is abundantly sustained by authority. Indeed, *many of the authorities would justify us in holding the action of the military authorities to have worked the dissolution of the entire contract of lease from the moment the lessees were dispossessed.*" (Italics ours.)

In *United States* v. *Certain Parcels of Land, etc.*, 55 F. Supp. 257, the court, in speaking of a condemnation of the temporary use of leased property for a period of one year

under the Second War Powers Act with the right of election of the United States Maritime Commission to take the use for additional yearly periods thereafter during the existing states of war and one year thereafter, said at p. 264:

> "The termination of the lease by the action of the government in taking possession under the Second War Powers Act by this condemnation, has in legal effect terminated the lease * * *."

In *Zacharie* v. *Sproule* (1870) 22 La. Ann. 325, the United States military authorities took possession of leased property during the War Between the States, and it was held that the lessee was, from that date, absolved from all obligations to the lessor, on account of the lease; and that, in a suit to enforce payment of the rent for the unexpired lease, by the lessor, if the lessee showed a termination of the lease by the military authorities, he was discharged.

In *Bowditch* v. *Heation*, 22 La. Ann. 356, a lessee, by reason of the blockade of the Mississippi and Forts Jackson and St. Philip by the United States Navy, were prevented from using the demised property. The Supreme Court of Louisiana held at p. 356:

> "We concur with the learned judge of the district court 'that the evidence clearly shows that, owing to the blockade of the mouth of the Mississippi river by the United States Navy, and the occupancy of Forts Jackson and St. Philip by the Confederate authorities, *the defendants had not free access to the premises* leased during the time for which rent is claimed,' and that 'this amounted, in law, to an eviction from the premises, and released them from their obligation to pay rent to the plaintiff'." (Italics ours.)

The following additional authorities are cited in support of the point here contended for: *Corrigan* v. *City of Chicago*, 144 Ill. 537, 33 N. E. 746; *Yellow Cab Co.* v. *Stafford-*

Smith Co., 320 Ill. 294, 150 N. E. 670; *Cottrell* v. *Gerson*, 371 Ill. 174, 20 N. E. (2d) 74; *McDonald Co., Inc.* v. *Hawkins*, 287 Mass. 71, 191 N. E. 405; *Parks* v. *City of Boston*, 32 Mass. 198; *City of Pasadena* v. *Porter*, 201 Cal. 381, 257 Pac. 526, 53 A. L. R. 679; *Uhler* v. *Cowen*, 199 Pa. 316, 49 Atl. 77; *Dobbins* v. *Brown*, 12 Pa. 75; *Mellis* v. *Berman*, 9 N. Y. S. (2d) 553; *Chelsea Hotel Corp.* v. *Gelles*, 129 N. J. L. 102, 28 Atl. (2d) 172; *Hizington* v. *Eldred Refining Co.*, 235 App. Div. 486, 275 N. Y. S. 464; *City of New York* v. *Pike Realty Corp.*, 247 N. Y. 245, 160 N. E. 359.

There is a comprehensive note in 43 A. L. R. at p. 1176, stating the rule of law on the condemnation of leased premises, or a part thereof, as affecting the rights of landlord and tenant *inter se*. The rule is stated thus:

> "The majority view is taken that when the whole of leased premises is taken under eminent domain proceedings this terminates the lease, and the tenant is under no liability to pay the rent accruing after this event."

Petitioner submits that the facts in the instant case come within the scope of this rule. The whole of the leased premises has been taken under eminent domain. The fact that the taking is partial, temporally speaking, should not cause a modification of the rule applied to the complete taking, quantitatively speaking.

That the true test to be applied to ascertain whether the lease is terminated is, *does the taking render the premises incapable of occupation for any purpose consistent with the lease*, is the correct test, and the only fair and reasonable one, is also made clear in Nichols on Eminent Domain, (2d ed.) Vol. 1, pp. 713-714:

> "It would seem that under such conditions *it would be fairer to both parties, especially when such a large proportion of the property is taken that the tenant cannot devote the remainder to the use for which he leased*

the premises, either to treat the taking as a termination of the lease, or to allow a proportional amount of the rent to be abated and to have the damages of the respective parties assessed accordingly. (Cit. *Uhler* v. *Cowen,* 192 Pa. 443, 44 Atl. 42.)" (Italics ours.)

Point C.

When the United States of America, by the exercise of the power of eminent domain, under the Second War Powers Act, takes an entire parcel of leased property for temporary use, for military and other war purposes, near the end of a long-term leasehold, for a definite period of 15 months, with the right to extend the period of the taking for future indefinite yearly periods, which may fall short of or exceed the remaining term of the lease, thereby rendering the property incapable of occupation for any purpose by the lessee, the doctrine known as "frustration of purpose" or "commercial frustration" is applicable, and terminates the lease by operation of law.

Gates v. *Goodloe,* 101 U. S. 612, discussed more fully under point A of this argument, while not containing any express language alluding to the doctrine of frustration *eo nomine,* nevertheless is clearly based on the doctrine as is apparent from a reading of the whole opinion. The following language at p. 619 contains the *ratio decidendi:*

> "* * * and since such enjoyment and use were materially interrupted and prevented by the interference of the law, or of lawful public authority, to which both parties were amenable, the lessees, it seems to the court, ought to be protected against liability for the rent. * * *"

In *Omnia Co.* v. *United States,* 261 U. S. 502, this court, in speaking of the requisition by the government, for war purposes, of the entire production of a steel manufacturer,

rendering impossible and unlawful of performance an outstanding contract between a manufacturer and a customer, held that the customer's rights were frustrated by the government's lawful action. This court at p. 512 quotes from *The Frankmere*, 262 Fed. 819, as follows:

> "* * * the contract was thereby frustrated when the government took possession of the ship, and the rights of the charterer were absolutely ended and terminated, * * *."

The following additional authorities are cited in support of the application to the case at bar of the doctrine of frustration involving leaseholds: *Deibler* v. *Bernard Bros. Inc.*, 385 Ill. 610, 53 N. E. (2d) 450; *Wood* v. *Bartolino*, 48 N. M. 175, 146 Pac. (2d) 883; *Lloyd* v. *Murphy*, 25 Cal. (2d) 48, 153 Pac. (2d) 47; *Colonial Operating Corp.* v. *Hannan Sales & Service*, 265 App. Div. 411, 39 N. Y. S. (2d) 217; *Byrnes* v. *Balcom*, 265 App. Div. 268, 38 N. Y. S. (2d) 801, affd. 290 N. Y. 730, 49 N. E. (2d) 1004; *First National Bank of New Rochelle* v. *Fairchester O. Co.*, 45 N. Y. S. (2d) 532; *Fisher* v. *Lohse*, 42 N. Y. S. (2d) 121; *Mutual Life Ins. Co. of N. Y.* v. *Lester Pianos, Inc.*, 42 N. Y. S. (2d) 350; *Direct Realty Co.* v. *Birnbaum*, 46 N. Y. S. (2d) 435; *Conklin* v. *Silver*, 187 Ia. 819, 174 N. W. 573, 7 A. L. R. 882; *Coogan* v. *Parker*, 2 S. C. 255; *Bayly* v. *Lawrence*, 1 S. C. L. 499; *A. L. Young Mach. Co.* v. *Lee Loader & Body Co.*, 218 Ill. App. 427; *Morgan* v. *Cook*, 213 Ill. App. 172; *Levy* v. *Johnston & Hunt*, 224 Ill. App. 300; *Roxford Knitting Co.* v. *Moore & Tierney* (C. C. A. 2d) 265 Fed. 177; *The Tay Salmon Fisheries Co., Ltd.* v. *Speedie*, 1929 S. C. 593; *Krell* v. *Henry*, 2 K. B. 740.

In many of the foregoing cases, relief was denied to the tenant because it was not shown that the exigencies of war totally prevented the use of the demised premises, but only restricted the use to a more limited purpose or hampered the tenant in his continued conduct of business in the de-

mised premises or made the business less profitable to the tenant. In those cases, however, the inference is clear that had the tenant been totally deprived of the use of the premises, the lease would have been held terminated by the doctrine of frustration.

The following law review articles also support the point under discussion: 16 Tex. L. R. 47; 20 Tex. L. R. 710, 736-742; 56 L. Q. Rev. 173; 45 Yale L. J. 452; 42 Mich. L. R. 603, 610-611.

Williston on Contracts, (Rev. ed.) Vol. 6, Sec. 1955, entitled "Effect of fortuitous destruction of value of leased premises on obligation to pay rent," states at pp. 5485-5486:

> "That the tenant has been relieved, nevertheless, in several cases indicates the *gravitation of the law toward a recognition of the principle that fortuitous destruction of the value of performance by a circumstance wholly outside the contemplation of the parties may excuse a promisor even in a lease.* Any relief granted the tenant, however, should consist in *avoidance of the lease*, not simply of his covenant to pay rent. *He should be liable for the rent so long as he retains possession.*" (Italics ours.)

VII.

CONCLUSION.

The interpretation of the effect of the federal statute in the circumstances of this case is a question of public importance. Petitioner has claimed in the state court a right or immunity under a law of the United States and it has been denied to it. Jurisdiction so clearly warranted by the Constitution, Article III, sec. 4, and so explicitly conferred by the Act of Congress, sec. 237 (b) Judicial Code, needs no justification. In no other manner can a uniform

construction of the statute laws of the United States be secured, so that they shall have the same meaning and effect in all the States of the Union. *St. Louis & Iron Mountain Ry.* v. *Taylor,* 210 U. S. 281, 293. The judgment should be reviewed.

Respectfully submitted,

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APPENDIX.

The federal statute authorizing the condemnation referred to in the pleadings is known as Title II of the Second War Powers Act of March 27, 1942, Ch. 199, 56 Stat. 177. It amended the Act of July 2, 1917, entitled "An Act to authorize condemnation proceedings of lands for military purposes." (Ch. 45, 40 Stat. 241.)

The pertinent part of the last mentioned statute reads as follows:

> "The Secretary of War may cause proceedings to be instituted in the name of the United States, in any court having jurisdiction of such proceedings for the acquirement by condemnation of any land, temporary use thereof or other interest therein, or right pertaining thereto, needed for the site, location, construction, or prosecution of works for fortifications, coast defenses, military training camps, and for the construction and operation of plants for the production of nitrate and other compounds and the manufacture of explosives and other munitions of war and for the development and transmission of power for the operations of such plants; such proceedings to be prosecuted in accordance with the laws relating to suits for the condemnation of property of the States wherein the proceedings may be instituted:— * * * And provided further, That when such property is acquired in time of war, or the imminence thereof, upon the filing of the petition for the condemnation of any land, temporary use thereof or other interest therein or right pertaining thereto to be acquired for any of the purposes aforesaid, immediate possession thereof may be taken to the extent of the interest to be acquired and the lands may be occupied and used for military purposes, * * *."

The following is the amendment of March 27, 1942:

> "The Act of July 2, 1917 (40 Stat. 241), entitled 'An Act to Authorize condemnation proceedings of

lands for military purposes', as amended, is hereby amended by adding at the end thereof the following Section:

'Sec. 2. The Secretary of War, the Secretary of the Navy, or any other officer, board, commission, or governmental corporation authorized by the President, may acquire by purchase, donation, or other means of transfer, or may cause proceedings to be instituted in any court having jurisdiction of such proceedings, to acquire by condemnation, any real property, temporary use thereof, or other interest therein, together with any personal property located thereon or used therewith, that shall be deemed necessary, for military, naval, or other war purposes, such proceedings to be in accordance with the Act of August 1, 1888 (25 Stat. 357), or any other applicable Federal statute, and may dispose of such property or interest therein by sale, lease, or otherwise, in accordance with section 1 (b) of the Act of July 2, 1940 (54 Stat. 712). Upon or after the filing of the condemnation petition, immediate possession may be taken and the property may be occupied, used, and improved for the purposes of this Act, notwithstanding any other law. Property acquired by purchase, donation, or other means of transfer may be occupied, used, and improved, for the purposes of this section prior to the approval of title by the Attorney General as required by section 355 of the Revised Statutes, as amended.' "

The following is Executive Order No. 9321, made by the President on March 25, 1943:

"By virtue of and pursuant to the authority vested in me by Title II of the Second War Powers Act, 1942, approved March 27, 1942 (56 Stat. 177), the Attorney General is hereby authorized to exercise the authority contained in said Title II of the Second War Powers Act, 1942, to acquire, use, and dispose of any real property, temporary use thereof, or other interest therein, together with any personal property located thereon, or used therewith, that shall be deemed necessary for military, naval or other war purposes." (8 F. R. 3749.)